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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-210094.2

**DATE:** July 11, 1983

**MATTER OF:** Owl Resources Company--Reconsideration

**DIGEST:**

Original decision denying protest is affirmed where the protester fails to establish that the decision was based on errors of law or did not take into consideration all relevant evidence timely presented.

Owl Resources Company requests reconsideration of our decision, Owl Resources Company, B-210094, April 29, 1983, 83-1 CPD 461, denying its protest that the Department of the Navy had improperly awarded a contract to General Ener-Tech, Inc. for the development of geothermal energy sources. For the reasons discussed below, we affirm our decision.

As part of its protest, Owl contended that Ener-Tech's bid should have been rejected as nonresponsive because it did not contain an acknowledgment of an amendment to the IFB which established a firm obligation on the Navy's part to purchase all electric power produced by the contractor, up to 75 megawatts (MW). Prior to this amendment, the solicitation provided that the Navy "may" accept up to 75 MW of power. Owl argued that this amendment was material, and thus had to be acknowledged, because it obviated the possibility that some or all of the first 75 MW of power would not be purchased by the Navy and that the contractor could sell this excess power to other Government users, possibly at higher prices. Owl concluded that the amendment could have significantly increased Ener-Tech's bid price and thus was material.

We found that the amendment was not material, and that Ener-Tech's failure to acknowledge it did not render its bid nonresponsive, because the amendment imposed no additional or different requirements on bidders. Moreover, we found that the amendment appeared to benefit the contractor by reducing its risk of selling less than 75 MW of power. Finally, we noted that Owl had failed to present evidence that Ener-Tech actually bid as suggested,

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or any other evidence that would indicate more than a theoretical possibility that the amendment had a material effect on prices.

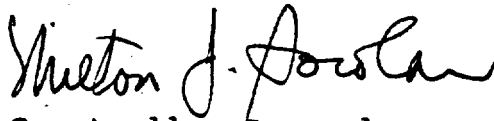
Owl raises three points in support of its request that we reconsider this portion of our decision. First, it states that it could not have submitted direct proof that Ener-Tech in fact bid as speculated since the Navy refused to disclose Ener-Tech's financial data. Owl submits that its failure to furnish such proof therefore should not have been "held against it" in our decision. Owl apparently does not fully comprehend the basis for our decision on this question. We held that the amendment was not material because it did not on its face appear to be material, and also because there was a total lack of evidence that Owl's position was more than a remote possibility. It was this absence of any objective evidence from the written record which was "held against" Owl, not that firm's failure to submit a particular type of evidence.

Owl next states that it explained the impact of the amendment on its own bid price at the administrative conference on this matter. This statement was not incorporated in Owl's comments on the conference, however, and appears nowhere else in the written record. Since our Office decides protests based solely on the written record, we will not consider such oral statements. See Cyber-Synectics Group, Inc.--Reconsideration, B-198344, August 15, 1980, 80-2 CPD 122. Even had this explanation been incorporated in the record, moreover, it would not warrant a different conclusion. Owl never submitted any objective documentary evidence indicating that the amendment had the claimed effect on its bid price. See generally Space Age Engineering, Inc.--Reconsideration, B-205594.3, September 24, 1982, 82-2 CPD 269.

Finally, Owl states that its research in preparing its bid disclosed that, in fact, "other Government users on the grid, with some intertie provision, could be supplied with the excess power at a reasonable return to Owl." This statement clearly could have been, but was not, submitted by Owl in support of its protest. We will not review on reconsideration evidence that a protester had access to and could have furnished during the initial consideration of its protest. See SAFE Export Corporation--Reconsideration, B-205501.2, January 17, 1983, 83-1 CPD 40.

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As Owl has not established that our initial decision denying its protest was based on errors of law or failed to take into consideration all relevant evidence timely presented, that decision is affirmed.

for   
Comptroller General  
of the United States